

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P. O. BOX 7566

WASHINGTON, D.C. 20044

(202) 662-6000

TELEX: 88-593 (COVLING WSH)

TELECOPIER: (202) 662-6291

CABLE: COVLING

JOHN P. RUPP

DIRECT DIAL NUMBER

(202) 662-5650

VIRGINIA OFFICE:
2000 CORPORATE RIDGE
MCLEAN, VIRGINIA 22102
(703) 749-3860

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ATTORNEYS' WORK PRODUCT

October 18, 1988

Dr. F. J. Schultz
Chairman, Industry Technical Committee
and Board of Directors, TITL
Lorillard, Inc.
420 English Street
P. O. Box 21688
Greensboro, North Carolina 27420

Dear Fred:

I understand that questions were raised at the recent meeting of the technical committee that guides the operations of the TITL concerning the circumstances in which individual companies are obligated to use in their advertising "tar" and nicotine ratings generated by TITL.

Under the applicable guidelines, which have been agreed to by the companies and have been provided to Congress as well as the Federal Trade Commission, it is expected that most cigarette brand advertising will carry "tar" and nicotine ratings generated by TITL. As successive test reports are released by TITL, the companies are expected to update the "tar" and nicotine ratings in their brand advertising to reflect the new results.

These general rules are subject to four specific exceptions. First, companies may utilize a "tar" or nicotine rating not generated by TITL if they are authorized to do so "by law." That exception was intended to cover situations such as exists with respect to Barclay, which has been subject to legal proceedings. Second, the TITL ratings should not be used if "the advertised brand has been changed in a way that renders obsolete or inaccurate the 'tar' or nicotine rating contained in the most recent TITL report for the advertised brand * * *." Implementation of this second exception has been left to the individual companies. As a general rule, however, the advertised ratings probably should be changed whenever reformulation of the advertised brand has altered the machine-generated ratings beyond the margin of error that exists with respect to individual ratings.

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The third exception to the general rule requiring use of the most recent TITL "tar" and nicotine ratings for the advertised brand covers brands that have not been tested by TITL. That exception basically covers new brands, introduced between TITL test cycles, and brands sold in such small amounts that they were not picked up by TITL. Finally, under the guidelines, a company may include in its advertising a "tar" or nicotine rating not generated by TITL, even if none of the exceptions already described are met, so long as the applicable TITL ratings also are included in the advertising. Only in utilizing the latter exception would a company be obligated to carry parallel or dual "tar" and nicotine ratings in its advertising.

Our expectation has been that the vast majority of cigarette advertisements would comply with the basic rule that I have described, requiring the most recent TITL ratings for the advertised brand to be used, rather than one of the specific exceptions. The staff of the Federal Trade Commission understands, however, that it may not always be possible (e.g., the brand has not been tested by TITL) or appropriate (e.g., the brand has been significantly reformulated) to use TITL ratings. The exceptions that I have described were included in the guidelines to cover such circumstances.

Please let me know if you have any further questions concerning application of the "tar" and nicotine guidelines.

Sincerely,



John P. Rupp

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